

SAMUEL EDEN,)
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 Plaintiff,)
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 v.)
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 STATE OF CALIFORNIA; EXPRESS)
 WAY,)
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 Defendants.)

No. C 10-5481 JSW (PR)

ORDER OF DISMISSAL

Plaintiff, a California prisoner proceeding pro se, filed this civil rights complaint under 42 U.S.C. § 1983 against the State of California and an entity named “Express Way.” Plaintiff’s application to proceed in forma pauperis is granted in a separate order. This Court now reviews the complaint pursuant to 28 U.S.C. § 1915A, and dismisses it for failure to state a cognizable claim for relief.

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.* § 1915A(b). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

1 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement
 2 of the claim showing that the pleader is entitled to relief." "Specific facts are not
 3 necessary; the statement need only "'give the defendant fair notice of what the . . . claim
 4 is and the grounds upon which it rests.'"" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200
 5 (2007) (citations omitted). Although in order to state a claim a complaint "does not need
 6 detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his
 7 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic
 8 recitation of the elements of a cause of action will not do. . . . Factual allegations must
 9 be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v.*
 10 *Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer
 11 "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974. Pro se
 12 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696,
 13 699 (9th Cir. 1990).

14 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1)
 15 that a right secured by the Constitution or laws of the United States was violated, and (2)
 16 that the alleged violation was committed by a person acting under the color of state law.
 17 *West v. Atkins*, 487 U.S. 42, 48 (1988).

18 LEGAL CLAIMS

19 Plaintiff alleges that he was injured in 1988 while operating a fork lift for a
 20 company in Hayward. He alleges that he received a large cash payment from Defendant
 21 Express Way for his injuries. A private individual or organization, such as Defendant
 22 Express Way, does not act under color of state law, an essential element of a Section
 23 1983 action. *Gomez v. Toledo*, 446 U.S. 635, 640 (1980). Private conduct, no matter
 24 how wrongful, is not covered under Section 1983. *Ouzts v. Maryland Nat'l Ins. Co.*, 505
 25 F.2d 547, 550 (9th Cir. 1974). As Defendant Express Way is not a state actor, Plaintiff's
 26 claims against it are not cognizable under Section 1983 and will be dismissed.

27 Plaintiff also names as a defendant the State of California. He alleges no conduct
 28 by the state, however, let alone any that might have caused Plaintiff to suffer harm. In

1 any event, the State of California is immune from lawsuits from its citizens under the
2 Eleventh Amendment. *See Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 237-38
3 (1985). Consequently, the claims against the State of California will be dismissed.

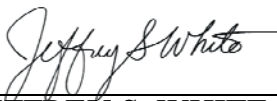
4 **CONCLUSION**

5 This case is DISMISSED because the complaint fails to state a cognizable claim
6 for relief.

7 The Clerk shall enter judgment and close the file.

8 IT IS SO ORDERED.

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10 DATED: January 7, 2011

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12 _____
13 JEFFREY S. WHITE
14 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

SAMUEL EDEN,

Plaintiff,

v.

STATE OF CALIFORNIA et al,

Defendant.

Case Number: CV10-05481 JSW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 7, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Samuel Eden
E89848
S.V.S.P.
P.O. Box 1060
Soledad, CA 93960

Dated: January 7, 2011



Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk